IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 23 OF 1997.

The Economic Development
Corporation of Goa,
Daman and Diu Ltd., Panaji,
having office at EDC House,
Dr. Atmaram Borkar Road,
Panaji, Goa. .... Appellant.

Versus

1. Communidade of Morombi
Pequeno a body constituted
under the Code of Communidade,
through its Attorney,
having its office at Merces, Goa.

2. Deputy Collector,
Goa North Division,
Panaji. .... Respondents.

Shri M.S. Sonak and Ms. P. Bharne, Advocates for the Appellant.

Shri A.R. Kantak, Advocate for the Respondent No.1.

CORAM: R. M. LODHA, J.

DATE: 30th SEPTEMBER, 2005.

ORAL JUDGMENT:

This First Appeal has been filed by E.D.C., Goa, Daman and Diu Ltd. (for short, 'the Corporation') aggrieved by the Judgment and Award dated 29th June, 1996 passed by the Addl. District Judge, Mapusa in Land

Acquisition Case No.41/82. By the said Judgment and Award the Addl. District Judge, Mapusa enhanced the compensation in respect of nallah land admeasuring 9200 sq.metres situate at Panaji in Tiswadi Taluka (for short, 'the subject land') by fixing the market value at the rate of Rs.25/- per sq.m. on the date of publication of the Notification u/s 4 of the Land Acquisition Act.

2. The Corporation needed land for its development project. By the Notification issued under Section 4 of the Land Acquisition Act on 10.7.1980 and published in the Official Gazette on 24.7.1980, vast tract of land comprising 87278 sq. m. was proposed to be acquired for the Corporation. The land sought to be acquired comprised of paddy fields, salt pans and nallah and that included the subject land. The Notification under S.6 of the Land Acquisition Act was published in the Official Gazette on 19.2.1981. The Land Acquisition Officer passed the Award fixing the market value of the subject land (nallah) at the rate of 0.50 per sq.m. It may not be out of place to mention here that as regards paddy field, the Land Acquisition Officer awarded compensation at the rate of Rs.20/- per sq.m. and for salt pan land compensation was fixed at the rate of Rs.12/- per sq.m. Many claimants sought reference from the Land Acquisition Officer and in all 28 Land Acquisition cases were referred to the Addl. District Judge, Mapusa. The present Appeal arises out of the Land

Acquisition Case No. 41/82. The Addl. District Judge by his Judgment and Award dated 31.3.1987 fixed the market value of the land comprising of paddy fields at the rate of Rs.100/- per sq.m. ; for the land of salt pans at the rate of Rs.65/- and in respect of nallah at the rate of Rs.25/- per sq.m. The Corporation preferred in all 28 appeals arising out of 28 Land Acquisition cases that were referred to the Reference Court. In 27 appeals this Court set aside the Award dated 31.3.87 passed by the Reference Court and remanded the matter back for fresh decision. It appears that one of the appeals preferred by the Corporation against the Judgment and Award dated 31.3.87 being First Appeal No.81/97 remained pending.

3. After remand, the Reference Court vide its Judgment and Award dated 29.6.96 maintained the compensation for the paddy fields at the rate of Rs.100/- per sq.m.; for salt pans at the rate of Rs.65/- per sq.m. and for nallah at the rate of Rs.25/- per sq.m. Aggrieved by the Judgment and Award dated 29.6.96 passed by the Reference Court, the Corporation preferred 27 appeals.

4. In the meanwhile First Appeal No.81/87 arising out of Judgment and Award dated 31.3.87 that remained pending before this Court was decided by the Division Bench on August 23, 1996. First Appeal related to the acquisition of the paddy field. The Division Bench allowed the appeal in

appeal and reduced the market value from Rs.100/- to Rs.80/- per sq.m. The Corporation dissatisfied by the Award in F.A. No.81/97 carried the appeal to the Supreme Court. After grant of leave, the appeal was registered as Civil Appeal No.4431/97. The Supreme Court modified the compensation granted by the Division Bench of this Court and further reduced the compensation for paddy field from Rs.80/- per sq.m. to Rs.40/- per sq.m.

5. Out of the 27 appeals that were preferred by the Corporation against the Judgment and Award dated 29.6.96 passed by the Reference Court, 24 First Appeals have been disposed of by this Court. Those 24 First Appeals were in respect of paddy fields. The learned Single Judge who heard the appeals was of the view that in the light of the Judgment of the Supreme Court dated 7th July, 1997 in Civil Appeal No. 4431/97 the compensation for paddy fields needed to be reduced to Rs.40/- per sq.m. and he did so. I am informed that the claimants have now approached the Supreme Court against the Judgment of the learned Single Judge and the appeal is pending.

6. In Civil Appeal No.4431/97 the Supreme Court has fixed the market value at the rate of Rs.40/- per sq.m. for acquisition of the paddy fields. The Judgment of the Supreme Court reads thus :-

> " Though the respondents have been served, they are not appearing either in person or through counsel. Respondent No.2 has filed the Power of Attorney and the counter-affidavit.
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> Leave granted.
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> Notification under Section 4(1) of the Land Acuqisition Act, 1894 (for short, the 'Act') was published on 10.7.1980 acquiring a large extent of land. Declaration under Section 6 was made on 7.9.1981. The Land Acquisition Officer awarded the compensation by his award dated May 2, 1981 @ Rs.20/- per sq. meter. On reference under Section 18, the District Judge by his award and decree dated 31.3.1987 enhanced the compensation to Rs.100/- per sq. meter. On further appeal, the High Court by its impugned judgment dated August 23, 1996 has partly allowed the appeal and reduced the market value of the land from Rs.100/- per sq.meter to Rs.80/- per sq. meter. Thus, this appeal by special leave.
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> Admittedly, the lands are agricultural lands as found by the High Court on page 43 of the paper book. Therefore, the lands could not be as assessed on that date as developed lands. Under these circumstances, it would be agricultural land. Taking into consideration the facts and circumstances of this case, we think that Rs.40/- would be the appropriate compensation.
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> The appeal is accordingly allowed. The award and decree of the District Judge is modified to the above extent. The respondents are entitled to solatium and interest under the provisions of the Amended Act 68 of 1984 and additional amount under Section 21 of the Act. No costs. "

7. The learned counsel for the respondent No.1-Claimant invited my attention to the later Judgment of the Supreme Court in the case of

Communidade of Morombi-O-Pequeno v. State of Goa [(2004) 12 S.C.C. 430]. In that appeal before the Supreme Court, the compensation in respect of 6640 sq. metres of land in Panaji situated very close to the subject land was the subject matter. That land admeasuring 6640 sq.m. comprised of paddy field (1125 sq.m.), salt pans (2240 sq.m.) and nallah (3320 sq.m.) and was acquired for the purpose of establishing a museum. It was not disputed before me by the learned counsel for the Corporation as well as by the learned counsel for the Claimant that the said land that was acquired for museum was similarly situated near the subject land. The land admeasuring 6640 sq.m. for the purpose of establishing museum was acquired pursuant to the Notification under Section 4 that was issued on 11.11.1977. In that case the Land Acquisition Officer fixed the price for the paddy field at the rate of Rs.11/- per sq.m., for salt pan at the rate of Rs.10/- per sq.m. and for nallah at the rate of Rs.6/- per sq.m. The matter of compensation after the judgment and award of the Reference Court and the High Court was carried to the Supreme Court. The Supreme Court upheld the market value fixed by the Reference Court. Thereby the market value for paddy field on the date of publication of Notification under S.4 in the year 1977 came to be fixed for paddy field at the rate of Rs.40/- per sq.m., for salt pans at the rate of Rs.60/- per sq.m. and for nallah at the rate of Rs.20/- per sq.m. For better appreciation of the Judgment of the Supreme Court, it may be reproduced as it is :-

" 2. Briefly stated, the facts are as follows:

Section 4 notification was issued on 11-11-1977 for the purposes of acquiring 6640 sq metres land in Panaji. The land was being acquired for the purpose of establishing a museum. It is an admitted position that out of 6640 sq metres land 1125 sq metres land were paddy land, 2240 sq metres were salt pans and 3320 sq metres were a nallah. An award came to be passed by the Land Acquisition Officer on 21-3-1978. He fixed a price at Rs. 11 per sq metre for paddy land, Rs 10 per sq metres for salt pan and Rs. 6 per sq metre for nallah. The Land Acquisition Officer also apportioned the compensation on the basis that 1/3 of the compensation, for paddy land, was to be given to the appellants (herein) and the rest was to be given to the tenant; for the salt pan 4/5 to the appellants and 1/5 to the tenant and for the nallah the entire compensation was given to the appellants.

3.The appellants filed a reference which was disposed of by a judgment dated 27-2-1990. Before the Reference Court the appellants led the evidence of two witnesses AW 1 and AW 2. AW 1 was the power-of-attorney holder of the appellants. AW 2 was a Civil Engineer who gave evidence of valuation of the acquired land and proved a certificate dated 5-2-1963 which showed that the acquired land was within commercial zone. The appellants also relied upon other awards passed in respect of other lands which had been acquired. One of the awards, in LA Case No.2 of 1979 was marked as 'Ext.A-3" by consent of the parties. The Reference Court considered the entire evidence and noted that it was proved that there was development all around the acquired land. The Reference Court took into account the other award which was in respect of acquisition of the land of the

appellants itself for the Tourism Department. This land was situated just 200 metres from this land. On the basis of evidence before it, the Reference Court concluded that the figures given by AW 2 were reliable figures.

4.The Reference Court accepted those figures and fixed price at Rs.80 per sq metre for paddy land, Rs 60 per sq metre for the salt pan and Rs 20 per sq metre for the nallah. The Reference Court apportioned compensation 50:50 between the appellants and the tenant in respect of paddy field. The Reference Court awarded solatium under Section 23(2) and interest under Sections 28 and 23(1-A).

5.The respondents filed an appeal before the High Court. The High Court has, by the impugned judgment, allowed this appeal. The High Court has held that the paddy field was subject to tenancy rights. The High Court has held that unless this land was made suitable by necessary filling of mud and other necessary development, it could not be presumed that the land would be suitable for construction activity. The High Court held that there was no material on record to show as to what would be the cost of transforming the paddy field and salt pan into a land suitable for construction activity. The High Court has held that in the absence of any evidence on this point, there was no scope for argument that the land was suitable for construction activity. The High Court has held that even though the lands in Case No. 2 of 1979 were merely 200 metres away that by itself was not sufficient to establish comparability of those lands with the acquired land. The High Court has held that merely because those lands were also paddy land was not sufficient to draw a conclusion that the acquired land should also be awarded at the same rate. The High Court has held that factors such as length and width of the land, the level of the

land, type of the soil, location, etc. are the various factors which are required to be looked into and considered for the purposes of comparison between the land in question with the land which was the subject-matter of Land Acquisition Case No. 2 of 1979. The High Court has held that there was no evidence on these factors. The High Court has held that it could not be said that the two lands were comparable. The High Court then relied on another judgment delivered by it on 19-2-1997 in First Appeal No. 38 of 1990 and held that all points raised in the present case were covered by that judgment. The High Court set aside the award of the Reference Court on this basis.

6.We have heard the parties at great length. In our view the High Court has fallen into error in coming to the conclusion that there was no evidence on record in respect of developmental costs. The High Court had noticed that the award in Land Acquisition Case No. 2 of 1979 had been marked as an exhibit by consent. The Reference Court had also called for the record of that case and looked into that record. The Reference Court had found that the two lands were comparable. In that award developmental costs were taken into account. Further, the High Court completely overlooked the evidence of AW 2. During the course of his evidence he produced and proved, as an expert, a report prepared by him. In that report he had, inter alia, given the cost of development. This was as follows :-

"Therefore, in order to fix the price of the land following deductions are made:

(a) 225/2.5 x 1.5 = Rs 135

(b)From 135, 15% is deducted for open space i.e. 20.20 per sq m.

(c)5% for light and water i.e. Rs 6.25 per sq m.

(d)5% for asphalting or road i.e. Rs 6.25 per sq m.

(e)30 cm of filling as per GSR rate 1974 which amounts to Rs 10.82 which corresponds to Rs 3.25 for paddy field only.

(f) Additional filling of 50 cm for salt pan which corresponds to Rs 8.65 per sq.m.

(g)For nallahs which are about 2 m deep the cost of filling corresponds to Rs 32.50 per sq m."

7.Thus a detailed cost analysis for development purposes had been given by the witness of the appellant. The High Court overlooked the fact that on this aspect this witness was not cross-examined. On this aspect the respondents had led no contrary evidence. Therefore, there was evidence of what the development cost would be. After taking into consideration the development cost and considering the fact that certain portions of the acquired land were paddy lands, salt pans and nallahs, the figures of Rs 80, 60 and 20 had been worked out.

8.It was submitted before us on the basis of the authority in the case of M.B. Gopala Krishna v. Special Dy. Collector, Land Acquisition that admittedly the acquired land was tenanted. It was submitted that the tenanted lands would not fetch the same amount as the land on which there were no tenants. This is not a reasoning on which the High Court has based the impugned judgment. Further, the tenants were only on the paddy land and the salt pans. Further, the price of Rs 80, 60 and 20 is arrived at after taking into consideration that these are tenanted lands. Therefore, we see no substance in this submission.

9.It was next submitted that the Reference Court was not right in awarding solatium under Section 23(2) and interest under Section 28 of the Land Acquisition Act, 1894. In support of this, reliance was placed

upon the case of Union of India v. Raghubir Singh and also upon Section 30(2) of the Land Acquisition (Amendment) Act, 1984. It was submitted that the notification was of 11-11-1977 and the award of the Collector had been passed on 23-3-1978 It was submitted that since this award was not between the period 30-4-1982 to 24-9-1982 to 24-9-1984, retrospective effect could not have been given and these amounts could not have been awarded. We see no substance in this submission. The award of th Reference Court is dated 27-2-1990. When the Reference Court was considering this matter Sections 23(2) and 28 as amended were already on the statute-book. Therefore, the Reference Court was bound to take note of these provisions. In such a case no question arises of any retrospectivity. In Raghubir Singh case the notification had been issued on 13-11-1959, the award had been made on 30-3-1963 and the Reference Court award was of 10-6-1968. It was only the High Court's decision which was after the amendment i.e. on 6-12-1984. Therefore, question of retrospectivity had arisen in that case. In this case no such question arises.

10.It was next submitted that the Reference Court was in error in awarding interest under Section 23(1-A). It is fairly conceded that this amount could not have been awarded.

11.It is next submitted that the Reference Court has made a mistake in awarding compensation for 6690 sq metres. It is fairly conceded that the total area acquired was 6640 sq metres.

12.It must be mentioned that we have seen the judgment dated 19-2-1997 in First Appeal No.38 of 1990 which was relied upon by the High Court. That judgment is in respect of acquisition of land in some other village, which land cannot be said to be comparable land. The High Court thus erred

> in relying on this judgment.
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> 13.For the above reasons, we set aside the judgment of the High Court and restore that of the Reference Court. We, however, clarify that the compensation will be for 6640 sq metres only. We clarify that the award of interest at the rate of 12% under Section 23(1-A) will stand deleted. "

8. In First Appeal No.17/1997, the Economic Development Corporation, Goa, Daman and Diu Ltd. v. Deputy Collector and Another the matter that came before me related to the award of compensation of the salt pans land under the same Notification. Both the aforesaid judgments of the Supreme Court were cited before me. While deciding the aforesaid First Appeal on 21st September, 2005, I observed thus :-

> " I am faced with the two Judgments of the Supreme Court. It is not in dispute that the compensation for the land that was under consideration in the case of Communidade of Morombi-O-Pequeno, particularly salt pan land before the Supreme Court is exactly identical and similar to the subject-land. That land was acquired pursuant to the Notification issued under Section 4 of the Land Acquisition Act Act on 11.11.1977 i.e. about three years prior to the Notification under Section 4 of the Land Acquisition Act whereby the subject-land was sought to be acquired. In that case for the salt pan land situated very close to the subject-land which was acquired in the year 1977, the market value was fixed @ Rs.60/- per sq. metre. In the other case viz. Civil Appeal No.4431/1997 for the acquisition of paddy fields under the same Notification whereunder the subject-land was acquired,

> the Supreme Court has fixed the compensation @ Rs.40/- per sq. metre. "

9. A close look at the judgment of the Supreme Court in Communidade of Morombi-o-Pequeno (supra) would show that there was an expert's evidence which gave detailed cost analysis for development purposes and the details of deductions in order to fix the price of the land. For nallah which was about 2 m. deep the cost of filling was arrived at Rs.32.50 per sq.m. It may be noticed that the evidence led in Land Acquisition Case No.37/82 was treated as evidence in the present case vide Order dated 13.1.96 by the Reference Court. In Land Acquisition Case No.37/82 Rui Ribeiro de Santana (AW2) was examined as an expert witness by the Claimants. He is a Civil Engineer by profession and for the nallah land he assessed the market value at Rs.46/- per sq.m. In his valuation report he stated that in case of nallah perhaps about 2.00 m. filling was required. According to GSR 1980, the cost of excavation, transport filling, compaction, watering and dumping in layers not exceeding 0.30 m thickness would be Rs.40/- c.m. However, he took into consideration the fact that the contractors entrusted with the filling were doing at Rs.20/- per c.m. In rebuttal, the Corporation examined Brig. A.G. Monteiro (DW.1). In his evidence DW.1 assessed the market value of the acquired nallah land at Rs.5/- per sq.m. Dealing with the valuation report of Rui R. Santana (AW.2), Brig. A.G. Monteiro in his valuation report admitted that

the valuation report by Eng. Rui Santana was very comprehensive; however there were certain flaws in the said report. Brig. Monteiro stated that while calculating the amount of filling, required 50% extra should be catered for. He also stated that the filling rate should be Rs.40/- per cubic m. as per GSR and not Rs.19/- the rate that was actually paid for by the contractors. Having a close look at the valuation reports of AW.2 and DW.1 and their oral deposition, I find that the valuation report and the evidence of Eng. Rui Santana (AW.2) does not deserve to be rejected; however some further reduction to rate fixed by AW.2 for nallah needs to be made. As a matter of fact, I am informed by the learned counsel for the parties Rui Ribeiro who was examined as AW.2 in the present case was the expert witness whose evidence has been accepted by the Supreme Court in the Comunidade of Morombi-o-Pequeno (supra).

10. Though AW.2 suggested the market value of nallah land @ Rs.46/- per sq.m., the price fixed by the Reference Court for the nallah land is at the rate of Rs.25/- per sq.m. The rate so fixed by the Reference Court is, thus, based on the evidence on record. Moreover, it would be seen that for a similarly situated nallah land that was acquired in the year 1977 for the purpose of museum, the market value was worked out at Rs.20/- per sq.m. by the Reference Court in the case of Comunidade of Morombi-o-Pequeno and upheld by the Supreme Court in the judgment cited supra. In the case

in hand the Notification under S.4 was published on 24.7.1980 i.e. more than 2-1/2 years after the acquisition of land in the case of Comunidade of Morombi-o-Pequeno. As a matter of fact, the Judgment of the Supreme Court in the case of Comunidade of Morombi-O-Pequeno is applicable on all fours to the case in hand. If for the nallah land acquired in the year 1977, the market value was fixed by the Reference Court at Rs.20/- per sq.m. and there being no evidence to show that the price of land in Panaji in the years between 1977 and 1980 went southwards, I find no reason why the market value of the subject land which was acquired vide Notification published under S.4 on 24.7.1980 should be reduced from Rs.25/- per sq.m. Thus in view of the evidence on record as well as the Judgment of the Supreme Court in the case of Comunidade of Morombi the market value of the subject land at the rate of Rs.25/- per sq.m. on the date of publication of notification under S.4 of the Land Acquisition Act fixed by the Reference Court does not call for interference.

11. The First Appeal is, therefore, dismissed with no order as to costs.

R. M. LODHA, J.

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